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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,579	12/27/2000	Alan Ebringer	092620269448	1579

7590

06/17/2003

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EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 06/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/646,579

Applicant(s)

EBRINGER, ALAN

Examiner

Rodney P. Swartz, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26March2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3,5-8 and 17 is/are allowed.
- 6) ☒ Claim(s) 4, 9-16, 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Applicant's Response to Office Action, received 26 March 2003, paper #17, is acknowledged. Claims 1, 3, 4, 9, 10, 11, 12, and 13 have been amended. New claims 16, 17, and 18 have been added.
2. Claims 1-18 are pending and under consideration.

### **Rejections Withdrawn**

3. The provisional rejection of claims 1, 2, 4, 5, 6, 10, 11, and 12 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-17, 20-29, 32-41, and 44-51 of copending Application No. 09/269,607, is withdrawn in light of the submitted Terminal Disclaimer.
4. The rejection of claims 1-3 and 5-8 under 35 U.S.C. 112, first paragraph, scope of enablement for purified/isolated individual antigens of *Acinetobacter calcoaceticus*, or for diagnosis of other de-myelinating diseases, is withdrawn in light of the claim amendments.

### **Rejections Maintained**

5. The rejection of claims 4, 9-16, and 18 under 35 U.S.C. 112, first paragraph, scope of enablement for purified/isolated individual antigens of *Acinetobacter calcoaceticus*, or for diagnosis of other de-myelinating diseases, is maintained for reasons of record.

Newly added claims 16-18 would have been included in the original rejection of claims 4, and 9-5 for the same reasons put forth in the original rejection. Therefore, the claims are included in this final rejection.

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Applicants argue that in light of the submitted Rule 132 Declaration of inventor Alan Ebringer, the rejection is obviated.

The examiner has considered applicants' argument, but does not find it persuasive because the Rule 132 Declaration is defective due to a lack of signature or date.

### **Conclusion**

6. Claims 4, 9-16, and 18 are finally rejected. Claims 1-3, 5-8, and 17 are free of prior art of record.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

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If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703)308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-0196.



RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER  
Art Unit 1645

June 16, 2003